

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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DEC - 1 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the Cable)
Television Consumer Protection)
and Competition Act of 1992)
)
Cable Home Wiring)
_____)

MM Docket. No. 92-260

COMMENTS OF BELLSOUTH CORPORATION

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DATE: December 1, 1992

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SUMMARY

The legislative history of the Cable Act of 1992 supports the Commission's adoption of cable home wiring rules which closely parallel the Commission's telecommunications inside wire and demarcation rules. The harmonization of these rules should be one of the Commission's policy goals in this proceeding. As cable television and telecommunications markets continue to converge, uniformity in regulation of home wiring will serve the public interest.

For new and existing installations in single family dwellings, the demarcation point for cable home wiring should be a point within twelve inches of the ground block or, where there is no ground block, within twelve inches of where the cable wiring enters the subscriber's premises. For multiple unit dwellings, the demarcation point should not be further inside the subscriber's premises than a point twelve inches from where the wiring first enters the subscriber's premises unit. However, the building owner should not have the right over the objection of the subscriber to require a remote demarcation point such as in the basement of the building. This aspect of the Commission's telecommunications demarcation rules is contrary to consumer interests and should be changed on reconsideration in CC Docket No. 88-57 to conform to the above cable rule. The demarcation point for multiple

building settings should follow the demarcation rules governing single and multiple unit dwellings in accordance with the nature of each building in question.

The Commission's rules should allow for subscriber dominion over cable home wiring upon termination of service and at any point in time when the cable operator has fully recovered its investment in such wiring. Prior to termination of service, the Commission's rules should expressly permit subscribers to remove, replace, rearrange or maintain cable home wiring.

Cable operators should be allowed to recover all unrecovered investment in embedded cable home wiring and required to expense all new installations. Cable operators should be prohibited from charging for the sale or use of cable home wiring once they have fully recovered their investment. Cable operators should be required to identify and provide a detailed accounting of all cable home wiring costs that have already been recovered. The Commission should adopt accounting rules that closely parallel those applied to Tier 1 telephone companies to ensure that cable operators do not use regulated revenues from captive cable ratepayers to subsidize the cable operator's provision of competitive home wiring and maintenance services.

Finally, the Commission should fashion an appropriate rule which ensures, consistent with Congressional intent, that cable operators continue to be responsible for stopping

signal leakage from wiring installed by cable operators,
even after termination of service.

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COMMENTS OF BELLSOUTH CORPORATION

BellSouth Corporation and its telephone operating company BellSouth Telecommunications, Inc. (BellSouth), hereby file their comments on the Notice of Proposed Rulemaking (Notice) released by the Commission in the above-captioned docket on November 6, 1992.

I. INTRODUCTION

The Commission has initiated this rulemaking to implement Section 16(d) of the Cable Act of 1992,¹ which provides in pertinent part:

. . . the Commission shall prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber.²

As noted by the Commission in the Notice,³ the legislative history to the Act indicates that such rules should enable

¹ Publ. No. 102-385, 102 stat. _____ (1992) ("Cable Act of 1992").

² Id., Section 16(d), to be codified at 47 U.S.C. Section 544(i).

³ Notice at para. 2.

the subscriber to acquire cable home wiring upon termination of service:

. . . if a subscriber decides to terminate cable service and later reinstate it or seek service from a different cable company, the subscriber should not have to bear the cost and inconvenience of having new wiring installed.

The FCC permits consumers to remove, replace, rearrange, or maintain telephone wiring inside the home even though it might be owned by a telephone company. The Committee thinks that this is a good policy and should be applied to cable. For cable, however, the FCC should extend its policy to permit ownership of the cable wiring by the homeowner. In doing this, the committee urges the FCC to adopt policies that will protect consumers against the imposition of unnecessary charges, for example, for home wiring maintenance. The FCC should also require cable operators to describe clearly options concerning home wiring maintenance. (emphasis added).⁴

Consistent with this clear expression of Congressional intent, the Commission should adopt as one of its policy goals in this proceeding the harmonization of its cable home wiring and Part 68 telecommunications inside wire and demarcation rules.⁵ To the extent practicable, these rules should be uniform. As cable television and telecommunications markets continue to converge, the services offered by each of these industries will increasingly lend themselves to delivery over the same home

⁴ Senate S. Rep. No. 92, 102d Cong., 1st Sess. (1991) ("Senate Report") at 23. Similar statements of legislative intent are found in the "House Report" (H.R. Rep. No. 628, 102d Cong., 2d Sess. (1992) at 118.

⁵ 47 C.F.R. Section 68.3.

wiring. Thus, uniformity between cable home wiring and telecommunications inside wiring rules should facilitate operational and administrative efficiencies, promote regulatory simplicity, and minimize customer confusion as to rights and responsibilities concerning the use of such wiring.

II. SPECIFIC RULE PROPOSALS

In the Notice, the Commission acknowledges the intent of Congress to protect terminating subscribers from unnecessary disruption and expense caused by removal of internal wiring and to foster multichannel service competition.⁶ On the other hand, the Commission recognizes the need to avoid discouraging cable investment in continuing to extend service to unwired homes by failing to account adequately for the property, contractual and access rights of cable operators. The Commission invites comments on how it can best balance these interests in establishing rules governing the disposition of cable home wiring upon a subscriber's termination of service, including comments on whether the rules need to be tailored to different subscriber settings such as single family dwellings, multiple unit dwellings and multiple building settings

⁶ Notice at para. 2.

(e.g., education campuses, military facilities, and hospitals).⁷

The Commission should be able to strike an appropriate balance of interests in fashioning its cable home wiring rules by adopting rules that closely parallel the Commission's telecommunications inside wire and demarcation rules. In particular, BellSouth urges the Commission to adopt rules conforming to the following proposals.

A. Single Family Dwellings

Typically, a single family dwelling unit receives cable service via a coaxial drop wire which terminates on a "ground block" located on or near the outside wall of the dwelling. The ground block serves a network protection/electrical hazard function which, in telephony terms, is analogous to the protector. The coaxial home wiring installed within the single family dwelling unit is connected directly to the ground block. The cable wiring within the dwelling unit is normally connected directly to a video CPE terminal (e.g., set-top converter box, television set, etc.).

This typical physical configuration suggests that the Commission can establish a cable wiring demarcation rule for single family dwellings which closely parallels the Part 68 rule for single unit installations, which currently reads:

⁷ Id., at para. 3.

For single unit installations . . . , the demarcation point shall be a point within twelve inches of the protector or, where there is no protector, within twelve inches of where the telephone wire enters the customer's premises.⁸

BellSouth proposes that the cable home wiring demarcation rule for single family dwellings provide:

For new and existing single unit installations, the demarcation point shall be a point within twelve inches of the ground block or, where there is no ground block, within twelve inches of where the cable wire enters the subscriber's premises.

Under this rule, the single unit subscriber should have the right upon termination of service to acquire dominion over all cable wiring on the subscriber's side of the demarcation point. This would enable the subscriber to utilize all cable wiring within the single dwelling unit to receive alternative video and telecommunications services. Such a rule would also allow the customer to avoid unnecessary disruption and expense caused by removal of such wiring. Furthermore, the rule is almost identical to the Commission's telecommunications demarcation rule. Thus, the proposed rule is consistent with both the Commission's primary policy objectives in this proceeding and the requirements of the statute.

To ensure that the Commission's rules do not discourage cable investment in continuing to extend service to unwired homes, the Commission should allow cable operators to fully

⁸ 47 C.F.R. Section 68.3(a).

recover any unrecovered investment in cable wiring upon termination of service.⁹ Where the cost of cable wiring has already been recovered by the cable operator, the Commission's rules should preclude the cable operator from further charging for the sale or use of such wiring and, consistent with the general intent of the Cable Act of 1992, ownership should be deemed to have vested in the subscriber.¹⁰ On new installations, the Commission's rules should require that all cable home wiring costs be "unbundled" from the provision of basic cable services and fully expensed upon initial installation, as in the case of

⁹ When taking the property of a regulated company the government is obliged nonetheless to compensate at fair market value for the property taken. U.S. v. Causby, 328 U.S. 256, 90 L. Ed. 1206, 66 S. Ct. 1062 (1946). However, since market value of inside wire may be difficult to ascertain without incurring substantial cost and because the Commission has previously permitted LECS to recover only their book cost of inside wire, it may be satisfactory to employ book cost as a surrogate for market value. Computer II Procedures Order, 95 F.C.C. 2d 1276, 1306-10, 1319 and n.40 (1983), modified in part, Reconsideration Order, 50 Fed. Reg. 9016 (1985), reversed in part and remanded, AT&T Information Services v. FCC, 854 F.2d 1442 (D.C. Cir. 1988).

¹⁰ Alternatively, the Commission could adopt rules which simply prevent cable operators from exercising further ownership control over such cable home wiring rather than requiring them to relinquish all claims to ownership once their investment has been fully recovered, as it did in the case of embedded telephone inside wiring. See, Detariffing the Installation and Maintenance of Inside Wiring, 51 Fed. Reg. 8498 (1986), recon. 1 FCC Rcd 1190 (1986), further recon., 3 FCC Rcd 1719 (1988), remanded, NARUC v. FCC, 880 F.2d 422 (D.C. Cir. 1989). Under this scenario, subscribers would have unrestricted access and control over such wiring even though legal title might technically remain with the cable operator.

telecommunications inside wire. As to embedded cable home wiring, the Commission should devise appropriate accounting and cost recovery rules which allow the cable operator to retire unrecovered investment over a specified period of time, after which the cable operator would be precluded from assessing any further charges for subscriber use of such wiring. The Commission should require cable operators to identify and provide a detailed accounting of all costs of embedded cable home wiring that have already been recovered.

The Commission's rules should expressly permit subscribers to remove, replace, rearrange or maintain cable home wiring prior to termination of service, even though the wiring is owned by the cable operator. As previously noted, Congress specifically stated in the legislative history that consumers should have such rights.¹¹ The legislative history additionally indicates that the Commission's rules should "protect consumers against the imposition of unnecessary charges, for example, for home wiring maintenance," and "require cable operators to describe clearly options concerning home wiring maintenance."¹² Thus, the Commission's rules governing the removal, replacement, rearrangement and maintenance of home wiring

¹¹ Supra, p.2.

¹² Id.

owned by the cable operator should be crafted to achieve these results.

The Commission must also address the degree to which regulatory and accounting safeguards are needed to foster competition and to achieve its goals in the video home wiring market. BellSouth has consistently argued that the accounting rules and safeguards applied to telephone inside wiring are unnecessarily restrictive and burdensome. However, to the extent the Commission is going to rely upon such regulatory controls, it should apply those regulations equally to all competitors with dominant market positions. Therefore, the Commission should adopt a full set of accounting rules and safeguards for the cable industry that closely parallel those applied to telephone companies.¹³ In summary, these regulations should be designed to ensure that cable operators do not use regulated revenues from captive cable ratepayers to subsidize the provision of competitive

¹³ Joint Cost Order, 2 FCC Rcd 1298 (1987), recon., 2 FCC Rcd 6283 (1987), modified on recon., 3 FCC Rcd 6701 (1988), aff'd sub nom., Southwestern Bell Corp v. FCC, 896 F.2d 1378 (D.C. Cir 1990). Additional cost accounting requirements were recently imposed upon Tier 1 telephone companies in the Commission's CI-III proceedings. See, Computer III Remand Proceeding, 6 FCC Rcd 7571 (1991), pets. for recon. pending, pets. for rev. pending, California v. FCC, (9th Cir. Feb. 14, 1992) (Case No. 92-70083, consolidated on June 2, 1992 with MCI v. FCC, Case No. 92-70186, N.Y. v. FCC, Case No. 92-70217, ANPA v. FCC, Case No. 92-70261); California v. FCC, (9th Cir. Feb. 21, 1992) (Case No. 92-70105, consolidated on June 2, 1992 with NYPSC v. FCC, Case No. 92-70281).

home wiring and maintenance services, and that cable operators do not otherwise use their dominant market position in cable home wiring to unfairly disadvantage competitors. As soon as additional competition in the home wiring market develops, the Commission should move to eliminate those telephone company and cable accounting rules and safeguards that are no longer necessary or overly restrictive in view of such increased competition.

B. Multiple Unit Dwellings

As in the case of single unit dwellings, the demarcation point for cable home wiring in multiple unit dwellings should not be further inside the subscriber's premises than a point twelve inches from where the wiring first enters the subscriber's dwelling unit. However, unlike the Commission's Part 68 rules, the building owner should not have the right over the objection of the subscriber to require the demarcation point be located at a remote common point in the multiple unit building, such as in the basement. Such rules tend to provide consumers less protection from unreasonable rates and poor quality service by interposing the facilities of a third party, the building owner, between the cable service provider and the subscriber. Interjecting a third party into the service relationship introduces additional problems as to control of

and responsibility for facilities running between the remote demarcation point and the subscriber's premises unit.¹⁴

Upon termination of cable service, the subscriber and the cable operator should have the same rights and obligations as described above in connection with single unit dwellings.

C. Multiple Building Settings

To the extent possible, the rules which apply to single and multiple unit dwellings should also apply to multiple building settings (e.g., educational campuses, military facilities, hospitals, etc.). Where a building contains a single subscriber premises unit, the single dwelling unit rules described above should apply. Where those buildings contain multiple subscriber units, the demarcation point should be established within twelve inches of where the cable wiring enters each subscriber unit.

D. Signal Leakage

The Notice asks for comments on the extent to which signal leakage responsibilities would be affected by the

¹⁴ To further harmonize the Commission's Part 68 demarcation rules with its cable home wiring rules, the Commission should grant the Petition for Partial Reconsideration and Clarification filed by BellSouth in CC Docket No. 88-57 on August 13, 1990. BellSouth's Petition requests that the Commission modify Section 68.3(b)(2) of its rules to allow a multi unit subscriber to receive and have direct access to telephone service at the subscriber's premises unit, even over the objection of the building owner. (BellSouth Petition at p. 3-10).

rules adopted in this proceeding.¹⁵ In particular, the Commission notes that the legislative history of the Cable Act of 1992 indicates that cable operators should "continue to have legal responsibility to prevent signal leakage, since improper installation or maintenance could threaten safety services that operate on critical frequencies."¹⁶

It would appear that cable operators have the ability to block signals at the ground block. Thus, under the above rule proposals, the cable operator would continue to have the ability to stop any signal leakage which occurs as a result of signals delivered by the cable operator to subscribers. Where the subscriber is no longer receiving video services from the cable operator, it appears to be the intent of Congress to continue to hold that cable operator legally responsible for signal leakage from such wiring.¹⁷ Therefore, the Commission should fashion an appropriate rule which ensures that the cable operator discharges this responsibility after termination of service. The Commission could further reduce the risk of signal leakage by requiring all cable home wiring to conform with FCC emission standards as a condition to installation and connection to video services.

¹⁵ Notice at para. 6.

¹⁶ Id. at para. 6.

¹⁷ Id.

III. CONCLUSION

For the above reasons, the Commission should adopt cable home wiring rules which closely parallel the Commission's telephone inside wiring rules as recommended herein.

Respectfully submitted,

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